DEC 1 3 1956
JOHN T. FEY, Cl

IN THE

Supreme Court of the United States

October Term, 1956.

No. 626

CENTRAL-ILLINOIS SECURITIES CORPORATION and C. A. JOHNSON,

Petitioners,

v.

BARTHOLOMEW A. BRICKLEY, TRUSTEE, SECURITIES AND EXCHANGE COMMISSION, et al.,

Respondents.

PETITION OF CENTRAL-ILLINOIS SECURITIES CORPORATION AND C. A. JOHNSON FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Morris L. Forer,
Daniel C. Cohen,
Packard Building,
Philadelphia 2, Pa.,
Attorneys for Central-Illinois Securities Corporation and C. A. Johnson, Petitioners.

Wolf, Block, Schorr and Solis-Cohen,
Packard Building,
Philadelphia 2, Pa.,
Of Counsel.

International, 325 Chestnut St., Phila. 6, Pa.

INDEX.

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes and Rules Involved	4
Statement	5
Reasons for Granting the Writ	13
Conclusion	18
Appendix A—Opinion and Judgment Below	1a
Appendix B—Statute	13a

CITATIONS.

Cases.

	Page
Downing v. SEC, 203 F. 2d 611 (D. C. Cir. 1953)	15
Electric Bond and Share Company, HCAR 11675 (Jan. 27, 1953)	13, 15
International Hydro-Electric System:	
8 SEC 485 (1941)	5, 6
11 SEC 888 (1942)	5
International Hydro-Electric System:	
HCAR 9120 (May 27, 1949)	6
HCAR 9535 (Dec. 6, 1949)	6
HCAR 12193 (Oct. 29, 1953)	7
HCAR 13044 (Nov. 23, 1955)	1
International Utilities Corporation, 21 SEC 283 (1945)	13
Protective Committee for Class A Stockholders v. SEC, 184 F. 2d 646 (2d Cir. 1950)	6, 14
Securities and Exchange Commission v. Central-Illinois Securities Corporation, 338 U. S. 96 (1949)	16
Securities and Exchange Commission v. Insurance Securities Incorporated, U. S. D. C., N. Calif., Civ. Action No. 35764	16
Standard Power and Light Company, HCAR 13101 (Feb. 16, 1956)	13
Todd v. SEC, 137 F. 2d 475 (6th Cir. 1943)	5, 14
The United Corporation, HCAR 10614 (June 15, 1951)	13, 15

CITATIONS (Continued).

Statutes and Codes.

	Page
28 USC § 1254	2
Administrative Procedure Act, 60 Stat. 238 (1946), 5 USC § 1001	4
Bankruptcy Act, Chapter X, 11 USC § 501	16
Investment Company Act of 1940, 54 Stat. 789, 15 USC § 80a	3, 4, 15
Public Utility Holding Company Act of 1935 (Title I, 49 Stat. 803, 15 USC § 79a, et seq.)	4
Sec. 11	5
Sec. 11(b)	5, 11
Sec. 11(d)	2, 5, 7, 17
Sec. 11(e)	17

Miscellaneous.

	Page
21st Ann. Rep. Securities and Exchange Commission, 1955 (1956)	13, 16

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1956.

No.

CENTRAL-ILLINOIS SECURITIES CORPORATION AND C. A. JOHNSON,

Petitioners,

v.

BARTHOLOMEW A. BRICKLEY, TRUSTEE, SECURITIES AND EXCHANGE COMMISSION, ET AL.,

Respondents.

PETITION OF CENTRAL-ILLINOIS SECURITIES CORPORATION AND C. A. JOHNSON FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Central-Illinois Securities Corporation and C. A. Johnson, through their counsel, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered on October 26, 1956 in the causes captioned No. 5127, The Equity Corporation v. Bartholomew A. Brickley, Trustee, et al. and No. 5128, Central-Illinois Securities Corporation, et al. v. Bartholomew A. Brickley, Trustee, et al. (R. 916).

OPINIONS BELOW.

The opinion in the Court of Appeals (R. 905) accompanying its judgment of October 26, 1956, has not yet been officially reported. The District Court entered no opinion but adopted the Findings and Opinion of the Securities and Exchange Commission (R. 893). The Commission's opinion was circulated as Holding Company Act Release No. 13044, under date of November 23, 1955 (R. 847).

JURISDICTION.

The judgment of the Court of Appeals was entered October 26, 1956. The jurisdiction of this Court is invoked under 28 USC § 1254(1).

QUESTIONS PRESENTED.

1. Has the Securities and Exchange Commission the power to amend a long-standing order of liquidation (approved by one Court of Appeals and an attack upon which was repulsed in another Court of Appeals), so as to transform a solvent public utility holding company into an investment company, without a vote of the shareholders and without preserving to dissenting shareholders the opportunity of withdrawing their aliquot share of the fungible assets?

2. Is a plan of reorganization under Section 11(d) of the Public Utility Holding Company Act fair, equitable, necessary and appropriate if it transforms a solvent holding company (now under order of liquidation) into an investment company without providing the shareholders an opportunity to vote on the transformation and without providing the dissenting shareholders the opportunity to withdraw their aliquot share of the fungible assets?

3. Is a plan of reorganization unfair, inequitable, unnecessary or inappropriate because it affirmatively provides for such rights of voting and withdrawal?

4. Do potential tax problems justify the Commission's denial to dissenting shareholders of the right to withdraw their aliquot share of the fungible assets of a public utility holding company under order of liquidation which the

Commission would now transform into an investment company?

5. Does the Commission have the power to amend or modify an order of dissolution fourteen years after it was entered?

6. Is a plan of reorganization to transform a solvent public utility holding company into a registered, closed-end, non-investment company fair and equitable and feasible when there is evidence of secret acquisition of, and payment of premiums for, obtaining of control of the company, asserted conflict of interest between the control group and other stockholders, a sharp schism between two large conglomerations of stockholdings, an alleged omnipresent danger of conversion of a present public utility holding company into a future personal holding company, and the allegation of elements of violation of the spirit of the Investment Company Act of 1940 if such statute were applicable prior to the registration of the company involved?

7. Is the District Court which has been administering an estate for more than a decade for the sole purpose of effectuating orderly dissolution precluded from a *de novo* consideration of a plan of reorganization to convert a company from a registered public utility holding company to a registered non-diversified closed-end investment company, by virtue of a determination of the Securities and Exchange Commission, involving no elements of valuation of the properties or any other elements over which the Commission could be said to have expert knowledge or to be in a position to exercise expert determination?

8. Are the shareholders of a solvent company, which has had no election of directors for more than a decade and which has been managed by a trustee appointed for the sole purpose of effectuating a liquidation, to be precluded

from voting upon a plan to convert such a registered public utility holding company into a registered non-diversified closed-end investment company and from a right of withdrawal, because of a Commission determination in another and palpably distinguishable reorganization matter, in which the management of that corporation voluntarily filed a plan of reorganization and in which case the Commission reversed its determination in another and previous voluntary management reorganization?

9. Is the Commission justified in approving a plan of reorganization and insisting upon its enforcement without the vote of shareholders in a solvent enterprise over serious questions as to the viability of the new enterprise urged upon the Commission by the holders (or the representatives) of in excess of 40% of the outstanding shares of the company?

STATUTES AND RULES INVOLVED.

The action of the Commission complained of arises out of its administration of the Public Utility Holding Company Act of 1935, Title I, 49 Stat. 803 (1935), 15 USC § 79a et seq. (hereinafter sometimes referred to as "the Act") and specifically relates to the findings and opinion of the Commission dated November 23, 1955 (R. 847) and to order of the Commission dated January 13, 1956 (R. 876) and its application of the same date (R. 880). Of particular importance in this case are the provisions of Section 11. The most pertinent subsections are set forth in the appendix. The further statute involved is the Investment Company Act of 1940, 54 Stat. 789 (1940), 15 USC § 80a et seq. Reference is also made to the Administrative Procedure Act, 60 Stat. 238 (1946), 5 USC § 1001 et seq.

STATEMENT.

The Public Utility Holding Company Act of 1935, approved August 26, 1935, provides that it was to be the duty of the Commission as soon as practicable after January 1, 1938, to take certain action with respect to registered public utility holding companies, under Section 11(b) of the statute.

International Hydro-Electric System ("IHES") was created in 1929 as a public utility holding company. At all times its holdings were limited in type and geographical coverage, and at no time was there a diversified portfolio. Its securities were sold and distributed to the public as the securities of a reasonably stable public utility holding company. (IHES was organized in the form of a Massachusetts trust to avoid the limitations of Massachusetts law as to ownership of stock of domestic utilities.)

After some complicated proceedings, IHES registered under the Act.

On July 21, 1942, following preliminary Section 11 proceedings (8 SEC 485 (1941)), the Commission entered an order for the liquidation and dissolution of IHES, pursuant to Section 11(b)(2) of the Act (11 SEC 888 (1942)). The basis for the liquidation order was that IHES was not serving any economic function with respect to any integrated public utility system and that its existence was therefore unduly or unnecessarily complicatory of the system structure. The order of the Commission was appealed but was upheld by the Court of Appeals for the Sixth Circuit.[1]

In 1943 the Commission filed in the United States District Court for the District of Massachusetts an application under Section 11(d) of the Act to enforce compliance with the liquidation order.[2] By decree dated October 11, 1943, that Court took jurisdiction over IHES and in late 1944

1. *Todd v. SEC*, 137 F. 2d 475 (6th Cir. 1943).
2. D. Mass., Civil Action No. 2430.

appointed a trustee to manage IHES' assets and its affairs, so as to effectuate the liquidation in an orderly fashion.

In succeeding years a number of plans and programs looking toward the gradual liquidation of IHES were filed, and substantial expense incurred in such process (8 SEC 485 (1941), HCAR 9120 (May 27, 1949), HCAR 9535 (December 6, 1949)). In 1949, the Commission considered but denied the application of one Paul H. Todd (at present a member of the Interim Board) for a modification of the 1942 liquidation order, to permit the continued existence of IHES as a holding company exempt from the stringent provisions of the Act.[3] Todd's chief contention had been that certain tax advantages, substantially similar to those alleged at this time, justified continuing IHES.

Further attempts by Todd and by a protective committee to have the dissolution order modified were unavailing.

In March, 1953, holders of the preferred and Class A stock (the two classes then outstanding) entered into a compromise agreement. This agreement provided for retiring the preferred stock by distributing to the holders certain assets of IHES. The compromise further contemplated continuation of IHES as an investment company. Some of the participants felt that fairness required that non-assenting shareholders be given their choice as to the future course of their investment. The proposal was that an investor unwilling to retain his interest in IHES, if it become a non-diversified investment company, be allowed to receive his aliquot share of the fungible assets and cash. This suggestion was neither rejected nor adopted but was reserved by the negotiators for later consideration[4] (R.

3. The Commission's action was affirmed by the Court of Appeals for the Second Circuit, *sub nom., Protective Committee for Class A Stockholders v. SEC*, 184 F. 2d 646 (1950).

4. Although the Commission did not directly face the question whether a right of withdrawal would be necessary, the recommendations of the Commissioner's staff in July, 1951, had considered a fair and equitable provision for withdrawal as a prerequisite for the transformation of IHES into an investment company.

70-71, 272-273, 415-417). The present Class A stockholders participating in the compromise agreement were petitioner Central-Illinois Securities Corporation, petitioner C. A. Johnson, Alfred Romney,[5] Paul H. Todd, and the Protective Committee (R. 69-70).

The Trustee filed a plan substantially incorporating the compromise, and the Commission found that Part III of the Trustee's plan satisfied the standards of Section 11(d) (HCAR 12193 (October 29, 1953)). Part III provided for electing a new board of directors of IHES. Without any discussion, the Commission approved the provision.

Part IV of the Trustee's plan provided that, upon the consummation of Part III, the Commission would be requested to modify its order of liquidation and to permit IHES to continue as a closed-end non-diversified investment company registered under the Investment Company Act of 1940. The Commission at that time in no way indicated either approval of any change in its long outstanding order of dissolution or the conditions under which IHES could become an investment company.

Subsequent to the Commission's decision and less than a month before the inception of the specifically limited election procedure, under Part III, one William K. Jacobs, Jr., first appeared on the IHES scene in his quest for control of the company. Jacobs' employment is and has been for the past twenty years the management of the assets of a single family (R. 31-34, 266, 304-307, 356-357). On behalf of these principals[6] and in cooperation with certain investment dealers, Jacobs acquired 250,000 IHES Class A shares in January, 1954 (R. 45, 78-79, 81-82, 92, 322-323).

---

5. A member of the so-called Interim Board of Directors who joined instant petitioners before the Commission.

6. The Norman family. Jacobs was reluctant to discuss the specific activities, interests, or identity of the Normans. The proxy material presented to the Class A stockholders two and three-quarter years ago and the record in this proceeding are for the most part barren of specific mention of Jacobs' principals (R. 52, 172, 242-243, 304-308, 313-314, 358-360, 365).

Instant petitioner Johnson, attempting to establish cordial contact with the newcomers, was rebuffed. The hope of an investment company having a broad public stock ownership was threatened by the agglomeration of stock in the hands of Jacobs, who was willing to pay high premiums to assure his control of IHES (R. 92, 317-318, 323, 325-330, 338, 340-341, 345, 373).

A bitter proxy battle developed between the newcomers, on the one hand, and Johnson, Romney, and Cameron Biewend, attempting to continue the spirit of the compromise of 1953, on the other.[7] As a result of the heated controversy, the market for IHES was stimulated, and the stock began to sell at a premium over the net asset value it represented.[8]

At the shareholders' meeting in April, 1954, approximately 406,000 shares were voted for the Jacobs-Todd slate and approximately 405,000 shares for Johnson, Romney, Biewend, and former Ambassador James Bruce. A shift of fewer than 1,000 shares would have changed the announced result of the election (R. 86).

Of the five directors in the Jacobs-Todd group, only Todd was a large shareholder (R. 496). The Jacobs principals, the Normans, and the investment dealers were the massively substantial shareholders; and Jacobs owned 1,000 shares himself (R. 31, 486). Burns, Haynes, and Marony, the other successful Jacobs candidates, owned no shares at all (R. 21). These three had been approached by Jacobs to form part of his slate, despite their lack of

---

7. Todd allied himself with Jacobs but took no active part in the proxy campaign. Later when the Interim Board was set up, while the court order alluded only to selection of a secretary by the Interim Board, Todd was, upon Jacobs' motion rewarded with the chairmanship of the Interim Board; and Todd's counsel was retained as the Interim Board's counsel (R. 249, 505-506).

8. It has been suggested that the market price also reflected the proposal of every articulate stockholder up to that time that any investment company plan would give a right of withdrawal to dissenting stockholders (briefs in proceedings).

experience with investment companies (R. 41-42, 48, 110-111, 236-239, 242).

Of the four directors in the minority, Johnson, Romney, and Biewend, on the other hand, were and had been for years substantial shareholders in their own right (R. 68-69, 95, 486). The fourth, Ambassador Bruce, was not.

During and directly after the extremely close election, Johnson and his associates charged the Jacobs-Todd group with gross irregularities, fraud, and unconscionable conduct. The validity of sufficient proxies was in question as to throw the entire election into doubt. A number of petitions and counter-petitions were filed in the District Court attacking this election (R. 88, 117, 670-715).

In the meantime, beginning in February 1954, Johnson persevered in his efforts to construct a workable plan, realizing the unfairness of compelling the individual shareholders to entrust funds invested in a registered public utility holding company to an investment company management dominated by the overhanging but not clearly delineated Jacobs interests (R. 89-91, 93-94, 103-106, 243, 382-383, 409, 481-482). In August, Johnson again sought a meeting with Jacobs for the purpose of settling their difficulties and achieving agreement, but was again rebuffed (R. 90).

While Johnson was thus attempting to salvage in a feasible manner for all of the stockholders realization of benefits in a continuing enterprise, if the order of dissolution could be amended, the litigation on the contested election before the District Court was coming to a head. It appeared likely that there would be extended hearings on the serious charges of fraud and election irregularities, contained in the Johnson-Romney petition, and on the cross-charges filed by Jacobs, et al. In order to expedite consideration of reorganization plans, Johnson urged that some non-prejudicial method of acceleration be effected. A Commission representative, seeking to facilitate the sub-

mission of plans, recommended to the District Court the naming of an interim board to formulate a plan, without prejudice to the rights of other interested persons to propose plans if they saw fit. Accordingly, with the agreement of Johnson and Romney, on December 8, 1954, the District Court entered a provisional order (1) denying the motions to strike and to dismiss the petition of Johnson and Romney, (2) appointing a special master to hear the controversy,[9] and (3) appointing a so-called interim board with severely limited powers as to presentation of a plan. Named to the Interim Board were the nine persons who were prima facie successful in the election: Biewend, Bruce, Jacobs, Johnson, Romney, Todd, and Jacobs' three nominees (R. 47-48, 504-505). The order clearly stated that there was no restriction on the right of any other person to present a plan.

Ultimately, three formal plans and one proposal in the nature of a plan were submitted to the Commission for its consideration. These were (1) the second amended plan of Central-Illinois Securities Corporation and C. A. Johnson,[10] (2) the plan of the Stockholders Protective Committee, (3) the amended plan of the Interim Board,[11] and (4) The Equity Corporation proposal. (The formally filed second amended plan of Central-Illinois Securities Corporation and C. A. Johnson was similar to The Equity Corporation proposal (R. 52-53).) The plans of the Protective Committee and of the Interim Board were like each other, with the important exceptions that the Protective

9. The controversy is probably moot at the present time and in any case is irrelevant to the present proceeding. It is significant, however, in that it reflects the inability of the opposing groups to live together and suggests the impossibility of the plan approved by the Commission and upheld by the courts below.

10. This plan was joined in by four of the nine members of the Interim Board.

11. The Interim Board plan was further amended pursuant to the findings of the Commission and as so amended was conditionally approved in the Commission's order of January 13, 1956.

Committee plan safe-guarded the right of withdrawal to dissenting stockholders, contemplated reorganization of IHES as a corporation (thereby assuring stockholders protections afforded under modern corporation statutes), and conditioned the plan on a vote of the stockholders of the solvent IHES.

The three formal plans and the proposal all contemplated the translation of IHES into one or more investment companies. This translation was to be the final step to compliance with the Section 11(b)(2) order and a substitute for the order of dissolution, if, upon a proper showing and under proper conditions, the Commissioner and then the District Court were to grant such revision of the order of liquidation.

The Commission approved the Interim Board plan, disapproved all others, and conditionally modified the liquidation order of 1942.

Upon application to the District Court, as part of that court's administration of IHES pursuant to an order of dissolution under Section 11(b) of the Act, enforcement of the order was granted, without formal findings of fact or discussion of the issues. Petitioners' subsequent application for a stay of proceedings was granted without bond being required (R. 903), despite the objections of the Commission, the Interim Board, and Jacobs' principals.

The Court of Appeals upheld the District Court, ruling upon specific provisions of the Central-Illinois Securities Corporation and C. A. Johnson plan not before it.

Over the past fourteen years IHES has, in compliance with the order to liquidate and dissolve, reduced its assets to 313,701 shares (18.8%) of the common stock of Gatineau Power Company (together with three shares of the 5% preferred stock of Gatineau), 462,573 shares (4.6%) of the common stock of New England Electric System ("NEES"), and all the common stock of Eastern New York Power Corporation ("ENYP"), whose assets in turn consist almost entirely of some $3,000,000 in cash, and cash

items of approximately $9,250,000. The Gatineau and NEES stocks are listed on exchanges. Thus, all of the IHES assets are fungible; and none presents any difficult problem of valuation.

Of the 462,572 common shares of NEES owned by IHES, 409,157 shares have an income tax basis greatly in excess of their present market value (R. 16, 57, 106). The Gatineau shares, on the other hand, have a tax basis of virtually zero.

IHES is solvent. It has outstanding only one class of stock. Its capitalization consists of 856,718 shares of Class A stock, with a par value of $25 per share.

While the IHES Class A stock is traded on the New York Stock Exchange, the market, in recent years, has been an inactive one. Rarely are more than a few hundred shares traded during any one week.

There has recently been a steady decline in the market value of the IHES stock despite the increasing value of its net assets. In December, 1954, when the District Court entered its order providing for the submission of plans and when the Commission was about to re-commence proceedings, the high and low quoted prices for the IHES Class A stock were 38 and 36, respectively. Twelve months later when the Commission had entered its order denying withdrawal rights the high and low, in December, 1955, were 33¾ and 31, respectively. On November 30, 1956, the stock closed at 29⅞.

As computed by Wiesenberger, the independent recognized expert on investment company securities, the IHES stock has been selling at a discount from its asset value from July, 1953, through January, 1954, in April, 1954, in May, 1954, and since the spring of 1955. The discount from asset value has been as high as 18% and at the present time, is approximately 13%.

The IHES shareholders include a few very large holders and a great many small ones. Almost 300,000 of

the 856,718 outstanding Class A shares are owned by the aggressive Jacobs-Norman-Wertheim group. There are some 2,154 registered shareholders; but of these 2,100 own fewer than 1,000 shares each, while 1,900 own fewer than 100 shares each. It was estimated upon an analysis of the registered holders that the approximately fifty persons owning over 1,000 shares each, hold in the aggregate 750,000 shares, or 85% of all the stock outstanding (R. 96-97).

REASONS FOR GRANTING THE WRIT.

1. This case involves important federal questions never heretofore determined by this Court with respect to the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and administrative procedures and review generally. These questions should be settled by this Court.

While much of the Commission's administration of companies under the Public Utility Holding Company Act has been completed, the administration of the Act remains an exceedingly important phase of that federal agency's work.[12] The cornerstone of the Act is Section 11, which has sometimes been called the "death sentence" statute. Future cases will arise under Section 11 for determination. The trend of recent cases has been to substitute for a death sentence or dissolution, transformation into investment companies.[13] What the rights of security holders of existing companies should be and under what conditions the Commission should permit such transformation are

12. 21ST ANN. REP., SECURITIES AND EXCHANGE COMMISSION, 1955 (1956) 51-88.

13. *E.g., International Utilities Corporation,* 21 SEC 283 (1945); *The United Corporation,* HCAR 10614 (June 15, 1951); *Electric Bond and Share Company,* HCAR 11675 (January 27, 1953); and subsequent to the Commission's determination in the instant matter: *Standard Power and Light Company,* HCAR 13101 (February 16, 1956).

graphically highlighted in this litigation which requires the adjudication of this Court.

There are two substantive questions in this proceeding. If the Commission has the power to permit an amendment of an order of dissolution, upheld by one Court of Appeals [14] and upheld against collateral attack by another,[15] more than a decade after such original order had been entered and after acknowledgedly substantial fees and expenses had been incurred under and in prosecution of the order of dissolution, so as to permit the registered public utility holding company to be transformed by virtue of the Commission order into a registered investment company (non-diversified, closed-end), do the sole owners of the enterprise, the shareholders who have not had any say of any sort in the management of their company for more than ten years have the right to vote specifically on whether to permit or go along with such a transformation and, secondly, if they do not care to go along, or dissent, do they have the right to obtain the aliquot portion of the assets where the assets, as here, are completely fungible?[16] These questions adumbrate the "fair and equitable" provisions of the Public Utility Holding Company Act. They also shed light on the great number of federal and state statutes having similar concepts of fairness and equity.

The issues involved in this case transcend the factual situation arising in the matter. While the Commission has never had to determine these particular questions prior to their being raised in this case (involving an excess of $28,000,000 of assets), similar questions have arisen in

14. *Todd v. SEC*, 137 F. 2d 475 (6th Cir. 1943).

15. *Protective Committee for Class A Stockholders v. SEC*, 184 F. 2d 646 (2d Cir. 1950).

16. As stated, without controverter on the part of any of the respondents, by petitioners in their brief before the Court of Appeals: "The normal implementation of the Commission's order of liquidation would be that the holding company, in accordance with a plan, would be dissolved. The usual plan would provide for the aliquot distribution of fungible assets, insofar as such assets could properly be distributed to the shareholders of the subject company."

cases with assets totaling more than a billion dollars and affecting thousands upon thousands of investors. In the former cases the Commission had before it *voluntary* plans filed by managements elected by shareholders. The earlier line of cases permitted vote by shareholders and a discontinuance of the dissenting shareholders' interest in the particular company upon transformation of that company.[17] Later, the Commission in one particular adjudication approved a plan filed by the management, where there was no order of dissolution.[18] This plan did not have any provision of a specific vote or of a withdrawal. In adjudicating it, the Commission alluded to the *ad hoc* nature of its disposition. Since its adjudication, however, the Commission has considered such *ad hoc* determination as in the nature of a promulgation of a rule placing a strict burden upon all proponents of plans providing for a vote and for withdrawal rights to demonstrate by an overwhelming burden of proof reasons for deviation from the supposed rule. In adopting without opinion the findings of the Commission, the District Court (albeit it later had sufficient doubts about its determination to have stayed the matter without bond) adopted the view of the Commission and on this point the Court of Appeals in this case adopted such views *sub silentio.*

The actions of the Commission and of the courts in this matter are clearly erroneous and require clarification and rectification by this Court. They also bring into play aspects of the administration of the Public Utility Holding Company Act vis-a-vis the Administrative Procedure Act.

2. The issues involved in this case also concern the Commission's proper administration of the Investment Company Act of 1940. This statute is becoming increas-

17. See *The United Corporation*, fn. 14, *supra; Downing v. SEC*, 203 F. 2d 611, 617 (D. C. Cir. 1953).

18. *Electric Bond and Share Company*, fn. 14, *supra.*

ingly important as the subject of this federal agency's administration.[19] The question arises whether the Commission should permit this creation of an investment company which is preceded by acts alleged to be in violation of the spirit if not of the specific letter of the Investment Company Act, if such Investment Company Act were directly applicable to the events and circumstances with respect to the transformation of the public utility holding company into the registered investment company. The Commission has had occasion to castigate in courts acts not dissimilar to those alleged against controlling elements in this case.[20] Increasingly the administration of the Investment Company Act will become more difficult and confused if the Commission's determination in this case is permitted.

3. The writ should further be granted because this case involves the proper judicial functioning of the federal system. In *Securities and Exchange Commission v. Central-Illinois Securities Corporation*, 338 U. S. 96 (1949), this Court decided that, in the event of a *voluntary* plan of reorganization under Section 11 of the Public Utility Holding Company Act, review through enforcement by District Court and review by the Court of Appeals are in effect similar. There has never been a determination, however, of the function of the District Court in a case such as the present which more closely resembles the Chapter X proceedings in which the Securities and Exchange Commission is a party and in which a public utility holding company is involved. Under Section 11(e) only a registered

19. 21ST ANN. REP., SECURITIES AND EXCHANGE COMMISSION, 1955 (1956) 96-102.

20. See, *e.g.*, recent case of *Securities and Exchange Commission v. Insurance Securities Incorporated, etc.*, U. S. D. C., N. Calif., Civ. Action No. 35764; Memorandum of Commission in Opposition of Defendants' Motion to Dismiss and for Summary Judgment (1956); the court's opinion and order dismissing the Commission's complaint on November 29, 1956, is not (or has not yet been) reported.

holding company or a subsidiary of a registered holding company may submit a plan. Under Section 11(d) the reorganization plan may be proposed in the first instance by the Commission or, subject to certain rules and regulations of the Commission, by any person having a *bona fide* interest in the reorganization. It is, therefore, within the statutory scheme that under Section 11(d) the Commission can propose its own plan, conduct its own hearing, make its own report and definitive determination. It would be anomalous in such a case that such plan would not be subject to any kind of *de novo* determination by the District Court, especially in a case such as this where the Court has been administering the estate for many years under an entirely different kind of order and theory. The district court proceedings contemplated by Section 11(d) must, therefore, in all respects differ from those envisaged under Section 11(e). This Court's *Central-Illinois Securities Corporation* decision is in no way conclusive here. The proper function of the federal judiciary system in this type of case should be clarified.

4. The question is also raised as to the rule-making effect of a prior opinion of the Commission. The prior opinion arose under Section 11(e); the present one arises under Section 11(d). The scope of the Commission's rule-making power would appear to be limited in the latter case to the mode and manner of the filing of a non-Commission plan and not to its adjudication. The decisions of the Commission and the courts below manifest a misconception of the difference between the adjudication and legislative or rule-making functions of administrative bodies.

The errors with respect to important principles of constitutional and administrative law should be reviewed and corrected.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

MORRIS L. FORER,
DANIEL C. COHEN,
Packard Building,
Philadelphia 2, Pennsylvania,
Attorneys for Central-Illinois Securities Corporation and C. A. Johnson, Petitioners.

WOLF, BLOCK, SCHORR AND SOLIS-COHEN,
Packard Building,
Philadelphia 2, Pennsylvania,
Of Counsel.

December, 1956.

APPENDIX A.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

No. 5127.

THE EQUITY CORPORATION,
Appellants,

v.

BARTHOLOMEW A. BRICKLEY, TRUSTEE, ET AL.,
Appellees.

No. 5128.

CENTRAL-ILLINOIS SECURITIES CORPORATION, ET AL.,
Appellant,

v.

BARTHOLOMEW A. BRICKLEY, TRUSTEE, ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

David Schenker, with whom *Schenker & Schenker* was on brief, for The Equity Corporation, appellant.

Morris L. Forer, with whom *Daniel C. Cohen*, and *Wolf, Block, Schorr and Solis-Cohen* were on brief, for Central-Illinois Securities Corporation and C. A. Johnson, appellants.

Aaron Levy, Attorney, with whom *Thomas G. Meeker*, General Counsel, *Frederick Zazove*, Chief Counsel, Division of Corporate Regulations, and *Robert S. Keebler*, *Attorney*, were on brief, for Securities and Exchange Commission, appellee.

Ganson Purcell, with whom *C. Roger Nelson* was on brief, for Interim Board of Directors of International Hydro-Electric System, appellee.

Henry J. Friendy, with whom *Leonard S. Sheriff* was on brief, for Lucinda Bunnen et al., appellees.

Opinion of the Court.

October 26, 1956.

MAGRUDER, *Chief Judge.* Appellants in these cases, Central-Illinois Securities Corporation, a registered investment company, and C. A. Johnson, its president and principal stockholder, and The Equity Corporation, another registered investment company, are all stockholders of International Hydro-Electric System (hereinafter abbreviated to IHES), a registered holding company under the Public Utility Holding Company Act of 1935 (49 Stat. 803). The appeals are from an order of the United States District Court for the District of Massachusetts entered April 23, 1956, issued under § 11(d) of the Act, approving and enforcing a plan of reorganization of IHES deemed to be a fair and equitable means of compliance with the corporate simplification requirements of § 11(b) of the Act, in accordance with an order of the Securities and Exchange Commission, as modified.

IHES was organized as a Massachusetts business trust, under an original declaration of trust dated March 25, 1929, and since amended from time to time. The trustees, and by delegation the board of directors, were given the broadest discretionary powers to engage in almost any sort of business activity—this without the requirement of a favoring vote by the shareholders, and without any obligation on the part of the trust to buy out a dissenting shareholder. Thus, though IHES started out as a holding company in the public utility field, the trustees and/or the board of directors, if they deemed it advisable, were fully empowered to dispose of the utility subsidiaries of the trust and to transmute IHES into an investment company.

On June 17, 1940, the Securities and Exchange Commission instituted a proceeding under § 11(b) of the Public Utility Holding Company Act to determine what action was necessary to be taken by IHES to comply with the simplification standards of § 11(b)(2). Eventually, on

July 21, 1942, after elaborate hearings, the Commission issued its Findings, Opinion and Order requiring that IHES be liquidated and dissolved, such liquidation and dissolution to be "carried out with care and in a manner which subserves the public interest in every particular." *International Hydro-Electric System*, 11 SEC 888, 908. On a petition by a shareholder of IHES for review of this Commission order, under § 24(a) of the Act, the Court of Appeals for the Sixth Circuit upheld the Commission and directed that the shareholder's petition for review be dismissed. *Todd v. S.E.C.*, 137 F.2d 475 (1943).

In view of the inability of the IHES management to come forward with a satisfactory plan for the orderly liquidation of the holding company, the Commission filed in the United States District Court for the District of Massachusetts an application under § 11(d) of the Act asking for a court decree enforcing compliance with the Commission's dissolution order of July 21, 1942. The district court took jurisdiction of IHES and its assets and enjoined the debenture holders from filing suits for enforcement of their claims pending the orderly liquidation of the estate. In November, 1944, the district court appointed Bartholomew A. Brickley as trustee of the estate of IHES, and since then Mr. Brickley has continued actively in that capacity.

In 1947 the trustee and interested security holders filed various plans for a division of the assets and for dissolution of IHES. After extensive hearings, serious disagreements among the various classes of security holders became apparent. In April, 1949, the trustee proposed a Second Plan, in four parts, for the liquidation of IHES. Parts I and II provided for the retirement of the IHES debentures and for a two-year bank loan. Part III provided for the issuance of trustee certificates to IHES preferred shareholders and Class A stockholders, and Part IV provided for distribution of the residue of the assets and dissolution of the enterprise. After Parts I and II had

been duly approved by the Commission and the district court, a compromise agreement was executed on March 26, 1953, the terms of which were embodied in Part III (as amended) and Part IV (as amended) of the trustee's Second Plan, Part III (as amended) provided (a) for the retirement of the IHES preferred stock, and (b) for the election of an interim board of directors of IHES to consist of nine members, with the function of representing the stockholders in formulating a plan for implementing Part IV (as amended), which called for a request to the Commission to modify its flat dissolution order of July 21, 1942, so as to permit the continuance of IHES as a closed end nondiversified investment company to be registered as such under the Investment Company Act of 1940. 54 Stat. 789. Be it noted that at the date of this compromise agreement of March 26, 1953, all the parties in interest were in apparent accord upon the desirability of modifying the Commission's dissolution order to permit survival of IHES as an investment company, and all assumed that the Commission had power to make such modification.

Meanwhile, in June, 1949, Paul H. Todd, a large stockholder in IHES, had proposed a plan to the Commission under which IHES would be permitted to continue in existence as an exempt holding company under § 3(a)(5) of the Act, this on the argument that most of the abuses and violations of the Act pointed out in the Commission's opinion supporting its 1942 dissolution order had already been eliminated. The Todd plan was supported by the IHES Class A stockholders but was opposed by the trustee, by the Commission's staff, and by the IHES preferred stockholders. An order was entered by the Commission disapproving the Todd plan. Upon a petition for review under § 24(a) filed by the Class A Stockholders Protective Committee, the Court of Appeals for the Second Circuit sustained this order of denial by the Commission. *Protective Committee, etc., v. S. E. C.*, 184 F.2d 646 (1950).

After that, Todd and the Class A. Stockholders Protective Committee took a new tack and filed other plans for the continuance of IHES, now to be divested of other public utility subsidiaries and turned into an investment company, instead of remaining as an exempt holding company as previously proposed and turned down by the Commission. While these plans were pending, the trustee of IHES made arrangements for the disposition of its various domestic subsidiaries, which greatly increased the cash position of IHES. The Class A stockholders of IHES and its preferred stockholders were persuaded to harmonize their previous differences and to execute the compromise agreement of March 26, 1953, above alluded to, upon assurances by the Commission's staff that the staff would support the proposal for continuance of IHES as an investment company, provided the bank debt and the IHES preferred stock were retired, leaving IHES with only one class of outstanding stock, the Class A stock, and with no domestic utility subsidiaries, IHES retaining only the stock of one foreign public utility, Gatineau Power Company of Canada.

A special election was held for the choice of the interim board of directors on April 27-28, 1954. There had been a proxy contest between two rival factions, the so-called Todd-Jacobs group and the Johnson-Romney group. Ninety-five per cent of the outstanding Class A shares voted at the election, and on the face of the return the Todd-Jacobs group elected five men and the Johnson-Romney group elected four. On December 8, 1954, the district court entered an order provisionally seating as the interim board of directors of IHES the nine persons so chosen, "with only the authority and for the sole purpose of representing the Class A stockholders in all proceedings before the Securities and Exchange Commission and this Court and in particular with reference to the formulation of proposals for the consummation of Part IV (First Amendment) of the Trustee's Second Plan."

The interim board in January, 1955, filed its plan, under which IHES (renamed Abacus Fund) would continue as a closed-end investment company, with minor and non-controversial amendments to the old declaration of trust in the direction of increasing the protection of the stockholders. Upon registration as an investment company, it was proposed that the Commission would issue an order exempting the company as a holding company under § 3(a)(5) of the Act.

A different plan was filed by appellants Johnson and Central-Illinois Securities Corporation, supported in the main also by appellant The Equity Corporation. Under this rival plan, IHES would be split into two registered investment companies, each to hold an aliquot portion of the present IHES assets. It was assumed that the stockholders in the Todd-Jacobs group would generally stay with IHES, while stockholders in the Johnson-Romney group would affiliate with the new company. No such split-off was suggested at the time of the proxy fight for election of the interim board, at which time the Johnson-Romney group was contending for mastery of the whole investment potential of IHES as a unified fund. The Johnson plan also provided that dissenting shareholders, who did not wish to affiliate with either investment company, would be entitled to withdraw upon receiving their pro rata share of the net assets of the estate. It was also provided that unless at least two-thirds of the Class A stock accepted the Johnson Plan, IHES would [correction pursuant to Order of Court dated November 23, 1956.] forthwith be liquidated, though under the IHES declaration of trust it required a vote of two-thirds of the shares to compel a liquidation.

After lengthy hearings on the plans, the Commission on November 23, 1955, filed its Findings and Opinion in which, after pointing out certain favorable tax consequences which would inhere in the interim board plan and be jeopardized or frustrated in the Johnson plan, it concluded that the interim board plan, with minor amendments, was the

only plan submitted which could receive its approval. The Commission also stated that if its suggested changes in the interim board plan were made by the board, "the 1942 order directing the liquidation and dissolution of IHES may be modified so as to permit its transformation into an investment company, that IHES will qualify for an exemption under Section 3(a)(5) of the Act following such transformation". The interim board having promptly amended its plan to conform with the Commission's suggestions, the Commission on January 13, 1956, entered its order finding that the interim board plan, as amended, was an appropriate means for effecting compliance with § 11(b)(2), was fair and equitable and satisfied the other applicable provisions of the Act, and it was further ordered that the Commission's dissolution order of July 21, 1942, "be and it hereby is modified to the extent necessary to permit IHES to consummate the aforesaid Interim Board plan; provided, however, that if said Interim Board plan be not approved and enforced by the Court or if said plan be not consummated the said order of July 21, 1942 shall be deemed to be in full force and effect as if not modified herein".

By supplemental application in the long-drawn-out proceeding before the district court, the Commission requested the court to approve and enforce the plan of the interim board. After notice and hearing, the court on April 23, 1956, adopted as its own the findings of fact and conclusions of law of the Commission dated November 23, 1955, approved the interim board plan "as fair and equitable, as appropriate to effectuate the provisions of Section 11 of the Act, and as satisfying the other applicable provisions of the Act." Further, the court order directed the trustee promptly to call a meeting of Class A shareholders for the purpose of electing a board of nine directors of IHES as reorganized pursuant to the plan. This order of the district court of April 23, 1956, is the one now on appeal.

We think there can be no substantial doubt of the power of the Commission to make an appropriate modifica-

tion of its outright dissolution order of July 21, 1942, notwithstanding the fact that in 1943 that dissolution order was sustained on review by the Court of Appeals for the Sixth Circuit. In support of this conclusion we need look no further than to the unqualified statutory authority in the last paragraph of § 11(b) of the Act: "The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24." See *American Power & Light Co. v. S. E. C.*, 329 U.S. 90, 121 (1946). Appellants have misconceived our holding in *Bailey v. Proctor*, 166 F.2d 392 (1948), in relying upon that case as authority for the proposition that the Commission needed to obtain prior leave from the Court of Appeals for the Sixth Circuit before proceeding to modify its dissolution order of July 21, 1942. See *Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U.S. 134, 140-44 (1940). And the judgment of the Court of Appeals for the Second Circuit (184 F.2d 646) sustaining an order of the Commission in 1949 disapproving the Todd plan for modification of the dissolution order so as to permit the continuance of IHES as an exempted holding company, was no barrier to the subsequent determination of the Commission, having in view the drastically altered condition of IHES as it existed on January 13, 1956, to modify its earlier order of dissolution so as to permit the consummation of the interim board's plan contemplating the continued existence of IHES as an investment company. Nor does the fact that the jurisdiction of the court below was first invokod under § 11(d) of the Act for the purpose of having that court enforce compliance with the Commission's earlier dissolution order prevent the Commission from subsequently modifying such order as above stated. By force of the authority of § 11(b) of the Act, as above recited, when the Commission modified its 1942 order to per-

mit compliance by an alternative method, the district court's jurisdiction was not ousted but was continued to enforce the Commission's order as modified. And, of course, the district court's order now under review, approving and enforcing the interim board's plan for converting IHES into an investment company, by necessary implication constituted an approval by the court of the Commission's aforesaid modification of its earlier dissolution order.

Also, we think it clearly appears from the Commission's elaborate findings and opinion, if not from the abbreviated statement of the case which we have made above, that there was ample evidence to sustain the Commission's conclusion that the interim board's plan should be approved as fair and equitable and in compliance with all the provisions of the Act. Nor can we say that the district court erred in adopting as its own the findings and conclusions of law of the Commission.

There is no doubt that the remedy of dissolution is not the only means for achieving the statutory objective of eliminating useless holding companies; transformation into an investment company may also be a permissible method of ceasing to be a holding company. *Downing v. S. E. C.*, 203 F.2d 611, 622 (C.A.D.C. 1953), cert. denied 346 U.S. 930 (1954).

We cannot accept appellants' arguments that the approved plan is necessarily unfair and inequitable (1) because the proposed transformation of IHES into an investment company was not made subject to an approving vote of at least two thirds of the Class A stockholders, as provided in the Johnson plan, or (2) because the approved plan contained no provision permitting dissenting shareholders to withdraw from the trust upon payment for their shares (of course, they are free to sell to outsiders if they want to get out). Approval by vote of the shareholders of a plan otherwise in compliance with the standards of §11(b) is not made mandatory by any statutory require-

ment. See *Phillips v. S. E. C.*, 153 F.2d 27 (C.A. 2d, 1946), cert. denied 328 U.S. 860 (1946). Though the Commission at an earlier stage approved plans having this feature, after further experience with the undesirable delays and controversies which often accompanied such a requirement of a stockholders' vote, the Commission adopted the policy of refusing to impose a voting requirement. See the extensive discussion by the Commission in *Electric Bond and Share Company*, Holding Company Act Release No. 11675 (1953). Furthermore, as pointed out by the Commission, a new vote on this issue by the Class A stockholders would serve no useful purpose. As stated in the Commission's opinion, the 1954 proxy contest incident to the selection of the interim board of directors pursuant to the compromise agreement of March 26, 1953, at which 95 per cent of the outstanding Class A stock voted, "was carried out in an atmosphere of continuation of IHES as an investment company. Each of the contesting groups represented from the beginning and throughout the contest that its objective was to convert IHES into an investment company with full preservation and realization upon its tax situation". In addition to that, under the approved plan there will, upon registration of the reorganized IHES as an investment company, be an election by the Class A stockholders of a new board of directors; and, of course, if the Johnson-Romney faction obtains a majority of the board at such election, it will come into control of the investment policies of the continued company. It is also to be pointed out that, after the approved reorganization is completed, the stockholders, if they wish, may exercise their franchise and cause liquidation of IHES, provided they obtain a two-thirds vote for that purpose in accordance with the terms of the declaration of trust; whereas, under the disapproved Johnson plan, it was in effect sought to enforce a dissolution of IHES by vote of less than a majority of the stock.

Likewise, there is no specific statutory requirement that a plan under § 11(b), to be approved as fair and equit-

able, must contain a provision permitting withdrawal by dissenting stockholders. In this connection it is to be noted that, under the disapproved Johnson plan, dissenting stockholders were not to be paid off in cash, as is provided under some state corporation laws, but were to be given a right of withdrawal from the enterprise upon payment to them of an aliquot share of the portfolio assets. Furthermore, appraisal rights of dissenting stockholders, as provided in Massachusetts law applicable to corporations, do not extend to IHES, organized as a Massachusetts trust; and as we have already observed, apart from the provisions of the Holding Company Act, the directors of IHES, under the powers vested in them by the declaration of trust, could have disposed of the portfolio of domestic utility companies and reinvested the proceeds in any other type of business or securities—this without any right of withdrawal by a dissenting stockholder. As the Commission stated, many plans under § 11(b) which have been approved both by the Commission and by the courts did not afford a right of withdrawal to dissenting stockholders, even where (as is not the case here) approval of such plans involved disregarding withdrawal rights existing under corporate charters. For these, and other reasons fully spelled out in the Commission's opinion, it was obviously within the Commission's broad discretionary power to approve the interim board plan though the plan did not contain any withdrawal provision.

Other contentions by appellants have been considered, but we think they do not have sufficient merit to call for special discussion.

The order of the District Court is affirmed.

On the same day, October 26, 1956, the following judgment was entered in each case:

Judgment.

October 26, 1956.

This cause came on to be heard on the record on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District Court is affirmed.

By THE COURT:
/s/ ROGER A. STINCHFIELD,
Clerk.

APPENDIX B.

Section 11 of the Public Utility Holding Company Act of 1935:

Sec. 11. (a) It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

• • •

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Company shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order

that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

(c) Any order under subsection (b) shall be complied with within one year from the date of such order; but the Commission shall, upon a showing (made before or after the entry of such order) that the applicant has been or will be unable in the exercise of due diligence to comply with such order within such time, extend such time for an additional period not exceeding one year if it finds such extension necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) The Commission may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce compliance with any order issued under subsection (b). In any such proceeding, the court as a court of equity may, to such extent as it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction, in any such proceeding, to appoint

a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer under the direction of the court the assets so possessed. In any proceeding for the enforcement of an order of the Commission issued under subsection (b), the trustee with the approval of the court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing. Such reorganization plan may be proposed in the first instance by the Commission, or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization.

(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan, and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of

such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

(f) In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem neces-

sary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

• • •